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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,899	04/09/2007	Wulf Schormair	CS881/BCS033096	1918
34469 7590 08/04/2009 BAYER CROPSCIENCE LP Patent Department 2 T. W. ALEXANDER DRIVE RESEARCH TRIANGLE PARK, NC 27709				
EXAMINER STEPHENS III, JOSE S				
ART UNIT 3728		PAPER NUMBER		
NOTIFICATION DATE 08/04/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/581,899

**Applicant(s)**

SCHORMAIR ET AL.

**Examiner**

JOSE S. STEPHENS III

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 09 April 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 May 2009 has been entered.

### ***Claim Objections***

2. The claims are objected to because they include reference characters which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McQuade et al. (US Patent 5,507,544) in view of Normann (US Patent 5,368,393).

With respect to claim 11, figures 8 of McQuade discloses a combined pack (see figure 8) which contains the following constituent parts comprising: two storage containers (see J<sub>1</sub> and J<sub>2</sub>) each having closure (C<sub>1</sub> and C<sub>2</sub>) and a handle (H<sub>1</sub> and H<sub>2</sub>), and a device, which fixedly connects the storage containers (see figure 8), wherein the device comprises a connector 10, wherein the connector is pushed through the handles of the storage containers.

McQuade does not disclose a connector with a left-hand part, a wall into which two holes are introduced, and with a cavity to the right of wall, a left-hand and right-hand side, a closure with two arresting means, a left-hand and right-hand side, a closure with two arresting means, wherein the connector is pushed through the handles of the storage containers and a closure is plugged on and the connector can be fixedly connected to the closure via the arresting means and wherein the connector and the closure are form-fitting.

Figures 1 and 6 of Normann disclose a device which fixedly connects to storage containers (plastic bags), wherein the device comprises a connector 10 comprising a cavity (see column 3, lines 52-57), a left-hand part (portion left of the right closure 15), a left-hand and right-hand side (see figure 1), a closure 15 that is threadably connected to the connector (see column 3, lines 58-61), wherein the connector is pushed through the handles of the storage containers.

McQuade discloses the claimed invention with the exception of the device. The device of Normann and the device of McQuade were equivalent structures known in the art. In order to rely on equivalence as a rationale supporting an obviousness-type rejection, the equivalency must be recognized in the prior art. *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958). Therefore, because these two devices were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the device of Normann for the device of McQuade. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

Finally the combination of McQuade and Normann disclose the claimed invention except that the closure is threadably connected to the connector instead of the connector comprising a wall into which two holes are introduced, a closure with two arresting means, wherein the connector can be fixedly connected to the closure via the arresting means fitting into the holes and wherein the connector and the closure are form-fitting. In order to rely on equivalence as a rationale supporting an obviousness-

type rejection, the equivalency must be recognized in the prior art. *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958). Normann represents evidence that threaded connections were art-recognized equivalent structures for form-fitting connections. Therefore, because these two connections were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a form-fitting connection for threaded connection. An express suggestion to substitute one equivalent component or process for another is not necessary to render such substitution obvious. *In re Fout*, 675 F.2d 297, 213 USPQ 532 (CCPA 1982).

With respect to claim 12, McQuade discloses the storage containers are canisters (see figure 8).

With respect to claim 13, the combination of McQuade and Normann disclose the claimed invention except for the containers have different sizes. It would have been an obvious matter of design choice to modify the size of the containers, since such a modification would have involved a mere change in the size of a component. A change in size is recognized as being within the level of ordinary skill in the art. *In Gardner v. TEC Systems, Inc.*, 220 USPQ 777 (Fed. Cir. 1884), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

With respect to claim 14, McQuade discloses the storage containers are made of plastic (see column 1, lines 39-46).

With respect to claim 15, McQuade discloses the combined pack packages pourable materials (see column 1, lines 39-46).

With respect to claim 16, the storage containers of McQuade are obviously capable of containing a crop protection agent, as intended use.

### ***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are devices similar to applicant's instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS

/Ehud Gartenberg/  
Supervisory Patent Examiner, Art Unit 3728